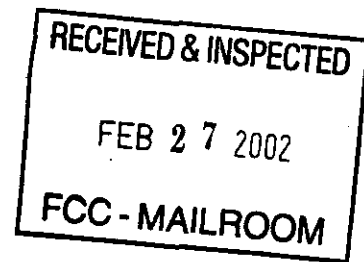


DOCKET FILE COPY ORIGINAL

Esko Public Schools
2 E Highway 61
Esko, MN 55733
November 20, 2001



Federal Communications Commission
Office of the Secretary
445 - 12th Street, S.W.
Room TW-A325
Washington, DC 20554

Dear Sir or Madam:

On November 12, 2001 we received notice that the Schools and Library Division had denied our appeal for year 4 e-rate funding. Since our case is very similar to the appeal from St. John Central School (CC Docket Nos. 96-45/97-21) being heard before the FCC, we feel that our appeal should not have been put on hold until the St. John Central School appeal was decided by the FCC. The following is a recap of the information that was sent to SLD in our first attempt at an appeal:

Applicant Name:	Esko School District	
Billed Entity Number:	133666	
471 Application Number:	Funding Year 4:	07/01/01 - 06/30/2002
Funding Request Numbers:	538750	\$1,140
	538791	\$90
	538452	\$17,419
	538456	\$4,500
	538465	\$3,600
	530629	\$6,600
Contact Name:	Richard Singpiel	
Title:	Technology Coordinator	
Address:	2 East Highway 61	
Address:	Esko, MN 55733	
Phone Number:	218-879-2969	
Fax Number:	218-879-7490	
E-mail Address:	dsingpiel@esko.k12.mn.us	

We recently received postcards notifying us that our 471 application block 6 certification was postmarked after the filing window closed and therefore both of our entire year 4 applications will not be funded. Upon investigation here is what we found:

Our 470 applications were submitted on-line on December 6th and December 11th, 2000.
Our 471 applications were submitted on-line on January 5th and January 9th, 2001.

No. of Copies rec'd _____
Let A B C D E _____

Signature pages were sent to our school office on January 11th to mail out certified mail. Actual pages were not brought to the post office until January 20th.

The mailing of the signature pages two days later than the closing of the window was an unintentional error, possibly due to a lack of understanding by office staff on the impending deadline.

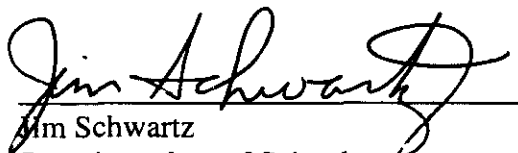
In all of the year 4 processing, we complied with the SLD rules and guidelines every step of the way. Posting our 470 to the web site for no less than 28 days while waiting for bids, selecting the vendor and even entering and posting our 471 nine days prior to the close of the window. Would we have gone to all of this work if we had not intended to comply with all of the rules and deadlines?

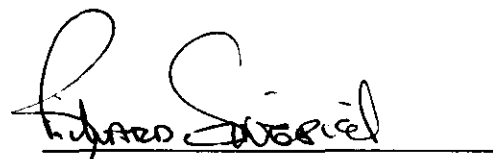
According to the Funds For Learning web site, we find that St. John Central School is appealing the same decision based on the fact that the E-Sign Act should cover e-rate applications. A precedent has been set by the FCC in allowing other transactions to be handled by on-line submission without requiring a subsequent signature page. In addition, according to the appeal by St. Johns School District, Section 104(c) of the E-Sign act prohibits state and federal agencies from imposing or reimposing any requirement that a record be in a tangible printed or paper form. The only exception to this rule is if there is a compelling government interest relating to law enforcement or national security. E-Rates certainly do not affect national security or law enforcement.

With this in mind, we ask that you reverse the denial by the SLD until such a time as the St. John Central School appeal is decided. The error on our part was unintentional and not one of a material nature. SLD had all of the pertinent information for processing our request, and if not for the late receipt of our certification page, our application would have been successful.

Thank you so much for your serious consideration and please contact us with any further information you may need.

Respectfully,


Jim Schwartz
Superintendent of Schools
Esko Public Schools

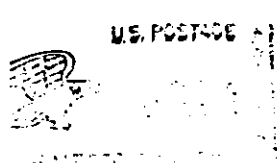

Richard Singpiel
Technology Coordinator
Esko Public Schools

Enclosures:

- Copy of denial post cards
- Copy of our post office receipt
- Copy of St. John Central School Appeal

es Division

ve
4-7026



Richard Singpiel
ESKO PUBLIC SCHOOL DISTRICT 99
2 E HIGHWAY 61 PO BB
ESKO, MN
55733

APPLICANTS
ntifier: phones

MAILING DATE:
July 24, 2001



USAC



Schools and Libraries Division
P.O. Box 7026
3833 Greenway Drive
Lawrence, KS 66044-7026

Richard Singpiel
ESKO PUBLIC SCHOOL DISTRICT 99
2 E HIGHWAY 61 PO BB
ESKO, MN
55733

ATTENTION:
2001-2002 E-RATE APPLICANTS
Applicant Form Identifier: cellular

MAILING
July 24



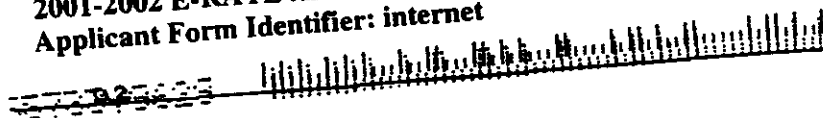
USAC

Schools and Libraries Division
P.O. Box 7026
3833 Greenway Drive
Lawrence, KS 66044-7026

Richard Singpiel
ESKO PUBLIC SCHOOL DISTRICT 99
2 E HIGHWAY 61 PO BB
ESKO, MN
55733

ATTENTION:
2001-2002 E-RATE APPLICANTS
Applicant Form Identifier: internet

MAILING DATE:
July 24, 2001



7099 3220 0001 3855 1791

CERTIFIED MAIL RECEIPT (Domestic Mail Only: No Insurance Coverage Provided)	
Article Sent To:	
Postage	\$.34
Certified Fee	1.90
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.74
Postmark Here 1-29-01	
Name (Please Print Clearly) (To be completed by mailer) SLD Farm 471	
Street, Apt. No.; or PO Box No.	
City, State, ZIP+ 4	
PS Form 3800, July 1999 See Reverse for Instructions	

7099 3220 0001 3855 1784

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only: No Insurance Coverage Provided)	
Article Sent To:	
Postage	\$.55
Certified Fee	1.90
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.95
Postmark Here 1-29-01	
Name (Please Print Clearly) (To be completed by mailer) SLD - Farm 471	
Street, Apt. No.; or PO Box No.	
City, State, ZIP+ 4	
PS Form 3800, July 1999 See Reverse for Instructions	

7099 3220 0001 3855 1753

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only: No Insurance Coverage Provided)	
Article Sent To:	
Postage	\$.34
Certified Fee	1.90
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.74
Postmark Here 1-29-01	
Name (Please Print Clearly) (To be completed by mailer) SLD Farm 471	
Street, Apt. No.; or PO Box No.	
City, State, ZIP+ 4	
PS Form 3800, July 1999 See Reverse for Instructions	



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2001-2002

November 8, 2001

Richard Singpiel
Esko Public Schools
Post Office Box 10
Esko, MN 55733

Re: Billed Entity Number: 133666
471 Application Number: 229615
Funding Request Number(s): 538452, 538456, and 438465
Your Correspondence Data: August 17, 2001

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year Four Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 30-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 538452, 538456, and 438465
Decision on Appeal: **Denied in Full**
Explanation:

- Your appeal admits that your Block 6 Certifications and Attachment 21 were not mailed until January 20, 2001. You claim that this was an unintentional error that was possibly due to a lack of understanding on your part. You claim that you have followed all other program rules. Your appeal claims that the situation surrounding your appeal is similar to that of the St. John Central School. You feel that the E-Sign Act should cover E-Rate Applications. You claim that Section 104(c) of the E-Sign Act prohibits State and Federal Agencies from imposing a requirement that a record be in a tangible printed or paper form. In light of the issues you have raised you would like the SLD to reconsider its decision to deny funding for this application.

- According to our records, the package that contained your Form 471 Certification and Attachment 21 was mailed and postmarked on January 29, 2001. Program rules required that your Funding Year Four Certification and Attachments be postmarked no later than 11:59 pm on January 18, 2001. Although E-certification is available for Funding Year Five it was not available for Funding Year Four. Therefore, a timely filed, signed paper Certification Page was required in Funding Year Four. Since your Form 471 Certification and Attachments were sent after the deadline, your application will not be considered within the original funding window for Funding Year Four. Therefore, your appeal is denied because your Block 6 Certification and Attachment 21 were not postmarked by January 18, 2001, and because there are insufficient funds to support Applications that were certified after the close of the Filing Window. Your application will not be considered for funding.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. Before preparing and submitting your appeal, please be sure to review the FCC rules concerning the filing of an appeal of an Administrator's Decision, which are posted on the website at <www.universalservice.org>. **You must file your appeal with the FCC no later than 30 days from the date on this letter for your appeal to be filed in a timely fashion.**

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

CC: Congressman James L. Oberstar
Re: Esko Public Schools
2365 Rayburn House Office Building
Washington, DC 20515-2308



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2001-2002

November 8, 2001

Richard Singpiel
Esko Public Schools
Post Office Box 10
Esko, MN 55733

Re: Billed Entity Number: 133666
471 Application Number: 230340
Funding Request Number(s): 538750, 538774, and 538791
Your Correspondence Data: August 17, 2001

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year Four Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 30-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 538750, 538774, and 538791
Decision on Appeal: **Denied in Full**
Explanation:

- Your appeal admits that your Block 6 Certifications and Attachment 21 were not mailed until January 20, 2001. You claim that this was an unintentional error that was possibly due to a lack of understanding on your part. You claim that you have followed all other program rules. Your appeal claims that the situation surrounding your appeal is similar to that of the St. John Central School. You feel that the E-Sign Act should cover E-Rate Applications. You claim that Section 104(c) of the E-Sign Act prohibits State and Federal Agencies from imposing a requirement that a record be in a tangible printed or paper form. In light of the issues you have raised you would like the SLD to reconsider its decision to deny funding for this application.

- According to our records, the package that contained your Form 471 Certification and Attachment 21 was mailed and postmarked on January 29, 2001. Program rules required that your Funding Year Four Certification and Attachments be postmarked no later than 11:59 pm on January 18, 2001. Although E-certification is available for Funding Year Five it was not available for Funding Year Four. Therefore, a timely filed, signed paper Certification Page was required in Funding Year Four. Since your Form 471 Certification and Attachments were sent after the deadline, your application will not be considered within the original funding window for Funding Year Four. Therefore, your appeal is denied because your Block 6 Certification and Attachment 21 were not postmarked by January 18, 2001, and because there are insufficient funds to support Applications that were certified after the close of the Filing Window. Your application will not be considered for funding.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. Before preparing and submitting your appeal, please be sure to review the FCC rules concerning the filing of an appeal of an Administrator's Decision, which are posted on the website at <www.universalservice.org>. You must file your appeal with the FCC no later than 30 days from the date on this letter for your appeal to be filed in a timely fashion.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

CC: Congressman James L. Oberstar
Re: Esko Public Schools
2365 Rayburn House Office Building
Washington, DC 20515-2308



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2001-2002

November 8, 2001

Richard Singpiel
Esko Public Schools
Post Office Box 10
Esko, MN 55733

Re: Billed Entity Number: 133666
471 Application Number: 226754
Funding Request Number(s): 530629
Your Correspondence Data: August 17, 2001

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year Four Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 30-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 530629
Decision on Appeal: **Denied in Full**
Explanation:

- Your appeal admits that your Block 6 Certifications and Attachment 21 were not mailed until January 20, 2001. You claim that this was an unintentional error that was possibly due to a lack of understanding on your part. You claim that you have followed all other program rules. Your appeal claims that the situation surrounding your appeal is similar to that of the St. John Central School. You feel that the E-Sign Act should cover E-Rate Applications. You claim that Section 104(c) of the E-Sign Act prohibits State and Federal Agencies from imposing a requirement that a record be in a tangible printed or paper form. In light of the issues you have raised you would like the SLD to reconsider its decision to deny funding for this application.

- According to our records, the package that contained your Form 471 Certification and Attachment 21 was mailed and postmarked on January 29, 2001. Program rules required that your Funding Year Four Certification and Attachments be postmarked no later than 11:59 pm on January 18, 2001. Although E-certification is available for Funding Year Five it was not available for Funding Year Four. Therefore, a timely filed, signed paper Certification Page was required in Funding Year Four. Since your Form 471 Certification and Attachments were sent after the deadline, your application will not be considered within the original funding window for Funding Year Four. Therefore, your appeal is denied because your Block 6 Certification and Attachment 21 were not postmarked by January 18, 2001, and because there are insufficient funds to support Applications that were certified after the close of the Filing Window. Your application will not be considered for funding.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. Before preparing and submitting your appeal, please be sure to review the FCC rules concerning the filing of an appeal of an Administrator's Decision, which are posted on the website at <www.universalservice.org>. **You must file your appeal with the FCC no later than 30 days from the date on this letter for your appeal to be filed in a timely fashion.**

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

CC: Congressman James L. Oberstar
Re: Esko Public Schools
2365 Rayburn House Office Building
Washington, DC 20515-2308

Law Offices

DOCKET FILE COPY ORIGINAL

HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

RECEIVED

AUG 9 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Mexico City	Tel Aviv
Rio de Janeiro	Tokyo
Representative Office:	

August 9, 2001

DAVID A. O'CONNOR
202-828-1889

Internet Address:
doconnor@hklaw.com

VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

Re: St. John Central School
Request for Review
CC Docket Nos. 96-45/97-21
Billed Entity No. 50794
Form 471 Application No. 239551

Dear Ms. Salas:

Transmitted herewith, on behalf of St. John Central School ("St. John"), are an original and four (4) copies of its Request for Review of the decision of the Schools and Libraries Division ("SLD") in the above-captioned proceeding. For the reasons set forth in the Request for Review, St. John is requesting that the Commission direct SLD to accept St. John's application as having been filed during the SLD's January 2001 filing window.

To expedite the filing of this application, the Declaration page included with this filing is a facsimile. The original Declaration will be forwarded under separate cover as soon as it is received by this office.

An extra copy of this filing is enclosed. Please date-stamp the extra copy and return it to the courier for return to me.

MAILED 014
AUG 9 2001

11 13 01 MON 14:17 FAX
11 13 01 000 13 02 000
Magalie Roman Salas, Esq.

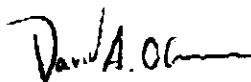
August 9, 2001

Page 2

Should you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

HOLLAND & KNIGHT LLP



David A. O'Connor
Counsel for St. John Central School

Enclosure

cc: Universal Service Administrative Company
Schools and Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

WAS1 #1003153 v1

RECEIVED

AUG 9 2001

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

In the Matter of)
Request for Reviewby)
St. John Central School) File No. SLD-_____
of Decision of Universal Service)
Administrator)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
Changes to the Board of Directors) CC Docket No. 97-21
of the National Exchange Carriers)
Association, Inc.)

To: The Common Carrier Bureau

Re: St. John Central School, Billed Entity Number 50794
Form 471 Number 239551, Funding Year 4, 7/101/2001- 6/30/2002

Request for Review

St. John Central School ("St. John"), by its attorneys and pursuant to Sections 54.719(c) and 54.721 of the Commission's rules, 47 C.F.R. §§ 54.719(c), 54.721, hereby requests a review of the decision of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company regarding St. John's Year Four Funding Request (Form 471 Application Number 239551). For the reasons set forth below, the Commission should direct the SLD to accept St. John's application as having been filed during the SLD's filing window.

I. STATEMENT OF FACTS.

St. John's Form 471 application was filed electronically on January 12, 2001. As part of the application, Ms. Lori Flesher, Teacher Representative for St. John,

typed her name in the "Certification and Signature" section of Block 6.¹ The SLD confirmed electronic receipt of the application on January 12, 2001.² However, Ms. Flesher did not mail the original signature page to SLD until January 19, 2001, one day after the filing window closed.

On July 10, 2001, SLD sent a postcard to St. John indicating that the application was received after the January 18 window closed.³ It appears that SLD's sole reason for making such a determination was that the printed signature page was not received until one day after the filing window closed. SLD indicated that because the application was considered late-filed, the application would be held pending final processing of those applications filed during the window. SLD further stated that it had not yet determined whether late-filed applications would be considered for discount funding. Applications that are received outside of the filing window are subject to separate funding priorities under the Commission's rules.⁴

Because it is highly unlikely that applications that are considered to have been received outside the filing window will result in the receipt of any E-rate funding, and because SLD erred in determining that St. John's application was late-filed, St. John now files this timely appeal of the SLD decision to the Commission.

II. The E-Sign Act Prohibits SLD from Requiring a Paper Signature Page.

St. John submits that the SLD is prohibited from rejecting the St. John application for failure to submit an original signature during the filing window, and

¹ See Exhibit 1 attached hereto.

² See *id.*

³ See Exhibit 2 attached hereto.

in fact is prohibited from requiring a paper signature page at all. The basis for this assertion is the E-Sign Act, which was signed into law last year.

On June 30, 2000, President Clinton signed into law the Electronic Signatures in Global and National Commerce Act, S. 761 ("E-Sign Act"). The E-Sign Act went into effect on October 1, 2000. The SLD's Form 471 for Year 4 is dated October 2000 and therefore is subject to the E-Sign Act.

The E-Sign Act states, in pertinent part:

Section 101. General Rule of Validity.

(a) IN GENERAL. Notwithstanding any statute, regulation, or other rule of law . . . with respect to any transaction in or affecting interstate or foreign commerce —

(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and

(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

Thus, the Act specifically provides that applications can be filed electronically in lieu of being filed in paper form, and that electronic signatures cannot be denied legal effect simply because they were not filed in paper format.

In this instance, SLD specifically requested applicants to complete the "Certification and Signature" block as part of the electronic Form 471 application.

* 47 C.F.R. § 54.507(g).

Ms. Flesher, St. John's representative, did so and filed the electronic application during the filing window. Because St. John's electronic Form 471 contained the legally binding electronic signature of St. John's representative, Ms. Flesher, St. John submits that SLD was prohibited under the E-Sign Act from requiring St. John to subsequently submit a signature page in paper form.⁵ Accordingly, St. John cannot be punished for failure to comply with an impermissible SLD rule. The Commission should therefore direct SLD to deem St. John's application as having been timely received during the filing window.⁶

In addition, Section 104(c) of the E-Sign Act prohibits state and federal agencies from imposing or reimposing "any requirement that a record be in a tangible printed or paper form." The only exception to this rule is if there is a "compelling government interest relating to law enforcement or national security" and imposing a paper requirement is essential to attaining that interest.⁷

Clearly in this situation there is no such compelling government interest relating to law enforcement. First, SLD is not a law enforcement agency and lacks law enforcement powers. Second, and more importantly, the prevention of fraud is not a sufficient justification for requiring original signature pages, because such a justification would undermine the very purpose of the E-Sign Act. The Act is

⁵ Furthermore, there is some evidence that the Administrative Procedure Act requires the instructions to Form 471 to be published in the *Federal Register* in order to be effective. St. John questions the validity of the SLD's original signature requirement if the instructions to Form 471 were not published in the *Federal Register*.

⁶ This case should be distinguished from previous Commission decisions that were decided prior to the enactment of the E-Sign Act. See, e.g., *Application of Bruggemeyer Memorial Library*, Order, 14 FCC Rcd. 13,170 (1999). In that case, the Commission denied a request for review by an applicant who filed its Form 471 electronically and faxed the signature page to the SLD but did not submit the original signature page to the SLD until after the filing window closed. St. John submits that the E-Sign Act invalidates the rationale underpinning the *Bruggemeyer* decision.

designed to legitimize electronic signatures; if Congress intended the prevention of fraud to be a compelling interest justifying an original signature page, Congress would not have enacted the law in the first place.

Finally, it is worth noting that pursuant to former Section 64.1160(b) of the FCC's rules, 47 C.F.R. § 64.1160(b), the FCC required long distance carriers to obtain the written signature of new customers. In September 2000, in reaction to the E-Sign Act, the FCC began permitting electronic signatures without the need for the submission of original signatures.⁸ As an agent of the FCC, SLD should not maintain stricter standards than the FCC itself.

II. Nothing of Value Is Gained by the Original Signature Page Requirement.

As a separate matter, St. John submits that the SLD's paper submission requirement serves no useful purpose and should not be required. By inserting a representative name and submitting the Form 471 application electronically, the signatory for St. completed the "Certification and Signature" portion of the form. The signatory thus certified that the information contained in the application was accurate and indeed the school was thus bound by that certification. Therefore, nothing is gained by a redundant requirement that applicants print out and submit a paper signature to the SLD.

⁷ E-Sign Act, § 104(b)(3)(B).

⁸ See 47 C.F.R. § 64.1120(c)(1); see also *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, FCC 00-255 (rel. Aug. 15, 2000) (Letters of Agency may be submitted electronically, without any written original signature requirement). In the decision, the FCC specifically cites as authority the E-Sign Act.